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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,117	12/15/2003	Daniel Yellin	MP1493 151668	4852
65589 7590 12/23/2009 SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITE 1900 1211 S.W. FIFTH AVENUE PORTLAND, OR 97204				
EXAMINER				
AGHDAM, FRESHTEH N				
ART UNIT		PAPER NUMBER		
2611				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/734,117

Applicant(s)

YELLIN ET AL.

Examiner

FRESHTEH N. AGHDAM

Art Unit

2611

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26, 34, 35, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 34, 35, and 39-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 1, 2009 has been entered.

Response to Arguments

Applicant's arguments filed December 1, 2009 have been fully considered but they are not persuasive.

Applicant's Argument(s):

Regarding claim 26, page 5, the Applicant argues that the claimed invention is not taught or suggested by Vilcocq "optimization criteria [that] are related to an input to said pre-emphasis filter and are related to an input to a voltage controlled oscillator of the fractional-N phase locked loop unit".

Examiner's Response:

Examiner disagrees with the Applicant because according to MPEP "prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. The prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why

the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. **The “mere existence of differences between the prior art and an invention does not establish the invention’s nonobviousness.”** *Dann v. Johnston*, 425 U.S. 219, 230, 189 USPQ 257, 261 (1976). **The gap between the prior art and the claimed invention may not be “so great as to render the [claim] nonobvious to one reasonably skilled in the art.”**^{Id.} In determining obviousness, neither the particular motivation to make the claimed invention nor the problem the inventor is solving controls. The proper analysis is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. See 35 U.S.C. 103(a). Factors other than the disclosures of the cited prior art may provide a basis for concluding that it would have been obvious to one of ordinary skill in the art to bridge the gap. The rationales discussed below outline reasoning that may be applied to find obviousness in such cases.

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.”

Examiner would like to direct the Applicant's attention to the fact that **the most important aspect of the claimed invention is the fact that the coefficients of the pre-emphasis filter is adaptive rather than predetermined**, which this feature is taught by Vilcocq. The only difference between the claimed invention and the prior art is that, according to the claimed invention, the optimization criteria are related to the input to the VCO but Vilcocq teaches the optimization criteria are related to the output to the VCO. One of ordinary skill in the art would readily recognize that it is well known in the art, obvious, and/or a matter of design choice for the coefficients of the pre-emphasis filter be obtained from the input to the VCO rather than the output to the VCO, wherein when the optimization criteria are based on the output to the VCO then the optimization process would be more accurate than when only the input to the VCO is being considered. On the other hand, when the optimization criteria are based on only the input to the VCO then hardware complexity is reduced due to computational simplicity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 34-35, and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindoff et al (US 6,101,224), further in view of Vilcocq et al (US 2004/0041638) and Hasson (US 2003/0123566).

As to claim 26, Lindoff discloses a communication device comprising: inherently an antenna (fig. 1A); inherently a baseband processor (col. 1, lines 38-4258-61; col. 4, lines 9-45); a power amplifier coupled to said antenna (means 306), the power amplifier being configured to receive a first output of said baseband processor from a signal path that includes a fractional-N-sigma-delta modulator (col. 3, lines 27-45) to receive a second output of the baseband processor, and to amplify the first output with a gain that is controlled by a varying amplitude of the second output (means 303 and 307). Lindoff does not expressly disclose that the fractional-N-sigma-delta modulator includes a pre-emphasis filter and the antenna is a dipole antenna. Vilcocq discloses a fractional-N-sigma-delta modulator that includes an adaptive pre-emphasis filter (fig. 2, means 18) in order to adjust the digital values to compensate at least for variations in voltage, temperature, and/ or aging (par. 38-39). Vilcocq further discloses a fractional-N-sigma-delta modulator including a sigma-delta converter (means 15); and a fractional-N phase locked loop unit coupled to the output of said sigma-delta converter (means 11-14), wherein the transfer function of said pre-emphasis filter is optimized according to predefined optimization criteria (Par. 8-13, 33-39, and 54-55), wherein the optimization criteria are related to an input to the filter and an output to the voltage controlled oscillator (par. 12-13). One of ordinary skill in the art would readily recognize that it is well known in the art, obvious, and/or a matter of design choice for the adaptive

coefficients of the pre-emphasis filter to be obtained from the input to the VCO rather than the output to the VCO, wherein when the optimization criteria are based on the output to the VCO then the optimization process would be more accurate than when only the input to the VCO is considered. On the other hand, when the optimization criteria are based on the input to the VCO then hardware complexity is reduced since less calculation/computation would be required. Therefore, it would have been obvious to one of ordinary skill in the art to improve the system performance of the digital synthesizer by adapting the transfer function of the pre-emphasis filter to the linearized response of the phase locked loop variations for the reason stated above. Hasson discloses a communication device that utilizes a dipole antenna (fig. 1, means 108; claim 6); a power amplifier coupled to the antenna (means 106); and a sigma-delta modulator coupled to the power amplifier (means 102). Therefore, it would have been obvious to one of ordinary skill in the art to combine the teaching of Hasson with Lindoff and Vilcoq in order to transmit the modulated signal via a dipole antenna since dipole antennas show high antenna efficiency and integration flexibility.

As to claim 34, one of ordinary skill in the art would recognize that it is well known and/or a matter of design choice since the pre-emphasis filter can be an FIR or IIR filter, wherein the FIR transfer function is more preferred comparing to an IIR transfer function filter since the filter utilizing the FIR transfer function is implemented in a Read Only Memory; and also, the FIR filter is more stable and have linear phase response. On the other hand, IIR filters utilize less number of taps than FIR filters.

Therefore, it would have been obvious to select an FIR filter to serve as the pre-emphasis filter for the reasons stated above.

As to claim 35, Vilcocq further discloses that determining the transfer function includes determining the transfer function that is optimized according to the predefined optimization criteria that includes a mean squared error of an input to the filter and an output to the voltage controlled oscillator (par. 12-13). One of ordinary skill in the art would readily recognize that it is obvious and/or a matter of design choice for the coefficient adaptation of the pre-emphasis filter to be obtained from the input to the VCO rather than the output of the VCO, as taught by Vilcocq, wherein when the optimization criteria is based on the output of the VCO then the optimization process would be more accurate than when only the input to the VCO is considered for adapting the coefficients of the pre-emphasis filter. But on the other hand, when the optimization criteria is based on only the input to the VCO then the hardware complexity is reduced due to computation simplicity. Therefore, it would have been obvious to one of ordinary skill in the art to improve the system performance of the digital synthesizer by adapting the transfer function of the pre-emphasis filter to the linearized response of the phase locked loop variations for the reason stated above.

As to claim 39, Vilcocq further teaches an adaptive filter to compare said input to said pre-emphasis filter and said output to said VCO and to adapt the optimization criteria in accordance with a result of said comparison (par. 54).

As to claim 40, Vilcocq further teaches said adaptive includes an analog to digital converter coupled to said input to said VCO (means 25).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRESHTEH N. AGHDAM whose telephone number is (571)272-6037. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chieh Fan can be reached on 571-272-3042. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/F. N. A./

Examiner, Art Unit 2611

/CHIEH M FAN/

Supervisory Patent Examiner, Art Unit 2611